

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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Case Number: 01-21-0004-8169

In the Matter of the Arbitration between

ALEN HADZIC, Claimant

v.

UNITED STATES FENCING ASSOCIATION, Respondent,

and

UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE

and

KATHERINE HOLMES, LEE KIEFER, JACKIE DUBROVICH, NICOLE ROSS, MARIEL ZAGUNIS, ELIZA STONE, DAGMARA WOZNIAK, COURTNEY HURLEY, KELLEY HURLEY, GEREK MEINHARDT, ALEXANDER MASSIALAS, NICK ITKIN, ELI DERSHWITZ, DARYL HOMER, ANDREW MACKIEWICZ, JAKE HOYLE, CURTIS McDOWALD, YEISSER RAMIREZ, Affected Athletes.

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**FINAL AWARD**

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA"), 36 U.S.C. §220505 et seq., and Section 9 of the United States Olympic and Paralympic Committee ("USOPC") Bylaws, having been duly sworn, and having fully considered the Claimant's Demand for Arbitration and Complaint With Exhibits; Prehearing Brief of the United States Olympic and Paralympic Committee & United States Fencing Association ("USFA"); and Supplemental Prehearing Memorandum of the United States Fencing Association as well as the parties' respective witness testimony, exhibits, and oral arguments during a July 22, 2021 Zoom hearing, does hereby, AWARD, as follows:

## THE PARTIES

Claimant Alen Hadzic is the replacement athlete for the men's epee team in the sport of fencing for Team USA in the 2020/21 Tokyo Olympic Games (Tokyo Olympic Games). He was represented by Michael Palma and Russell Prince, Palma & Prince, Miami, Florida.

Respondent USFA is the National Governing Body ("NGB") for the sport of fencing in the United States. It was represented by Richard R. Young and Steven Perfrement, Bryan Cave Leighton Paisner LLP, Colorado Springs and Denver, Colorado as well as James H. Neale, Winslett Studnicky McCormick & Bomser LLP, New York, New York.

The USOPC chose to participate in this proceeding as a non-party and was represented by Messrs. Young and Perfrement as well as Sara Pflipsen, Sr. Counsel NGB and Athlete Affairs.

The Affected Athletes are members of the Team USA fencing team. They were not represented by counsel.

## PROCEDURAL BACKGROUND

On Friday, July 16, 2021, the Athlete filed a complaint against USFA pursuant to Section 9 of the USOPC Bylaws alleging that USAF denied him the opportunity to participate fully during the Tokyo Games because of certain restrictions it imposed because of pending allegations of sexual misconduct against him, which are being investigated by the U.S. Center for SafeSport ("Center").

On Monday, July 19, 2021, the USOPC acknowledged receipt of the Athlete's complaint and provided USFA with written notice of its filing.

On July 19, 2021, the Athlete filed a Demand for Arbitration with the AAA regarding "Issues dealing with USOPC Participation Matters" and his Section 9 Complaint With Exhibits, which requested expedited resolution.

On July 20, 2021, Professor Matthew J. Mitten was appointed as the arbitrator in this proceeding.

On July 21, 2021 at approximately 5 ½ hours before the scheduled hearing, the Arbitrator requested that the parties' counsel "consider and be prepared to address the potential relevance" of *Claimants and USA Taekwondo, Inc.*, AAA Case No. 01-19-0000-5335 (March 19, 2019),

which is published on the USOPC website at <https://www.teamusa.org/Footer/Legal/Arbitration-and-Hearing-Panel-Cases/Section-9>.

On July 21, 2021, a hearing by videoconference was set for July 22, 2021 at 8:00pm Tokyo Time.

On July 21, 2021, the AAA provided the Affected Athletes with the following “Notice of Pending Arbitration and Hearing”:

Dear Affected Athlete:

**PLEASE TAKE NOTICE**, that a Demand for Arbitration has been filed by Alen Hadzic (“Claimant”) with the American Arbitration Association (“AAA”), pursuant to Section 9 of the Bylaws of the USOPC against USA Fencing.

An independent arbitrator appointed by the AAA, Mr. Matt Mitten, has determined you may be affected by the outcome of this pending expedited arbitration and therefore, you have the right to appear and participate as a party at the pending arbitration, and to be represented by counsel or another individual of your choice, if you so desire. You need not appear. However, having now been given notice of the Arbitration and Hearing and your right to appear and participate as a party, **you shall be bound by the decision of the arbitration regardless of your decision to appear.**

Should you wish to obtain confidential and independent advice about your rights concerning this arbitration, you may contact the Athlete Ombuds, **Kacie Wallace**, at 719-439-5240 or [kacie@usathlete.org](mailto:kacie@usathlete.org).

Mr. Mitten has set the arbitration to be conducted via Zoom commencing on **July 22, 2021 at 8:00pm Tokyo Time**. The Zoom login information is as follows . . .

It would be appreciated if you could advise all on this service list at your earliest convenience about whether you intend to participate in any manner in this procedure. In any event, all affected athletes will receive copies of all submissions made during this procedure. **Please address any communications concerning this matter to all contained on this email.**

On July 21, 2021, the USOPC and USFA filed a combined prehearing brief, and USFA filed a supplemental prehearing memorandum.

On July 21, 2021, USFA provided notice of the Center’s request to have an observer present during the arbitration hearing because of its pending investigation of allegations against the Athlete, which it supported. Because the Athlete and the USOPC objected, the Arbitrator denied the Center ’s request.

On July 21, 2021, the Athlete's counsel requested via email that USFA pay his attorneys fees and costs if he prevailed in this arbitration proceeding.

On July 22, 2021, the Arbitrator conducted a videoconference hearing from 8:00pm until approximately 11:00pm Tokyo time during which the following persons testified: the Athlete; Alexey Cheremsky, the Athlete's personal coach; Katherine Holmes, an Affected Athlete who competes in women's epee and is the athlete representative elected by the fencing team members to serve on USFA's board of directors; Anthony "Buckie" Leach, fencing team National Coach; Kate Reisinger, USFA's Team Leader and High Performance Director; and Nicole Deal, USOPC Chief of Security and Athlete Safety. Kacie Wallace, the USOPC Athlete Ombuds, observed the hearing.

After the parties and their counsel presented their respective evidence and arguments as well as acknowledged that each of them had received a fair and full hearing, the Arbitrator closed the hearing and took a short break to consider their respective submissions. Because of the parties' need for an immediate decision, the Arbitrator then orally informed the parties and their counsel of his ruling that rejected the Athlete's claims and provided his reasoning. Soon thereafter, the Athlete's counsel sent an email to the Arbitrator requesting clarification regarding whether he was prevailing party entitled to reimbursement of any costs and/or attorneys' fees from USFA: "We recognize that we did not prevail in sum on the complete removal of the safety plan. However, my understanding is that we did prevail on the fact that we demonstrated that USFA/USOPC's current plan was certainly not the least restrictive alternative for all parties under the circumstance. But/for this arbitration and your determination, there were certainly more obvious and less restrictive alternatives available to the participants."

On July 22, 2021 at 12:04 pm CT (July 23, 2021 at 2:04 am Tokyo time), the Arbitrator issued the following Operative Award, which provided a brief summary of his oral ruling and the clarification requested by the Athlete's counsel:

I have jurisdiction to resolve the parties' dispute because the 2020/21 Tokyo Olympic Games are a "protected competition" as well as the authority to render a final and binding award.

Claimant did not prove by a preponderance of evidence that the conditions or requirements of USFA's July 13, 2021 "Safety Plan" to protect the safety and well-being of Team USA fencing team members, particularly its female athletes, denies him an

opportunity to compete in the Tokyo Olympic Games as an alternate member of the men's fencing epee team. His contentions that this "Safety Plan" is "arbitrary, unnecessary, and . . . tantamount to removing his right to fully participate in the Olympic Experience" as the men's epee alternate/replacement athlete and denies his "opportunity to have a safe, secure, healthy time at the Olympic Games" and/or "fundamentally impact[s] . . . his ability to be ready to compete and participate" in the Tokyo Olympic Games are rejected.

All claims raised in Claimant's Section 9 Complaint and his requested relief (i.e., that "the Restrictions imposed on him by USFA for the 2021 Tokyo Olympic Games be deemed unnecessary and stricken") are denied.

Because Claimant is not the prevailing party in this arbitration proceeding (even though during the hearing USFA voluntarily offered to arrange for his faster transportation to its High Performance Center and the Olympic Village as well as to relocate Claimant and his personal coach Alexey Cheremsky to another Tokyo hotel), his July 21 and 22, 2021 requests that USFA pay his attorneys fees and costs are denied.

As agreed to by the parties' counsel, I will issue a reasoned award by no later than 30 days from the July 22, 2021 closing date of the hearing.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are denied.

## **JURISDICTION**

It is undisputed that the Tokyo Olympic Games are a "protected competition" pursuant to Sections 1.3(l), (u), and (x)(i) and 9.1 of the USOPC Bylaws. the parties' counsel acknowledged At the beginning of the July 22, 2021 Zoom hearing, the parties' counsel acknowledged that the Arbitrator has jurisdiction to resolve the parties' dispute and the authority to render a final and binding award.

## **MATERIAL FACTS**

On May 31, 2019, USAF placed the Athlete on probation through the Closing Ceremony of the Tokyo Olympic Games (which originally were scheduled to be held in July-August 2020 and postponed until 2021 because of the Covid-19 pandemic).

On May 07, 2021, the Athlete qualified as an alternate or replacement athlete for Team USA's men's epee fencing competition at the Tokyo Olympic Games. As an alternate, he will participate in the individual epee competition only if one of the three members of the epee team is injured and unable to compete in this event. He may be selected to participate in the team epee

competition if a current team member is unable to compete because of an injury or at the fencing team coach's discretion.

On June 2, 2021, the Center imposed interim measures on the Athlete pending its investigation and resolution of a 2019 sexual misconduct allegation as well as separate 2013 and 2015 sexual misconduct allegations against him, which were filed by three different women against him after May 7, 2021. If these allegations are proven, the Athlete's misconduct would violate SafeSport Code IX C. These measures included an interim suspension prohibiting his participation in any events or competitions under the auspices of USAF or the USOPC, including the Tokyo Olympic Games. The Center also issued a "No-Contact Directive" that prohibited the Athlete from communicating with the three different women who filed complaints against him or their immediate families.

Thereafter, in accordance with the customary practice, the USOPC and USFA published the Center's interim measures imposed on the Athlete.

On June 28, 2021, in response to the Athlete's appeal of the Center's interim measures, a JAMS Arbitrator modified them by lifting his interim suspension, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

The Athlete attempted to rebut all allegations against him by denying and asserting their validity, but the JAMS Arbitrator noted that *SafeSport Arbitration Rule 40(e)* requires that "there shall be a rebuttable presumption that the allegations, as presented, are true" and determined that this "rebuttable presumption of validity warrants deferring further analysis to the full hearing on the merits."

The JAMS Arbitrator explained her reasoning for modifying the Center's interim measures in part as follows:

[REDACTED]

[REDACTED]

[REDACTED]

...

[REDACTED]

[REDACTED]

[REDACTED]

In a July 13, 2021 letter to the Athlete, USFA confirmed he was “eligible to travel to Tokyo as the men’s epee replacement athlete” pursuant to the JAMS arbitrator’s ruling. USFA informed him that federal law’s granting of exclusive jurisdiction to the Center regarding the pending sexual misconduct allegations against him prevents it “from conducting parallel disciplinary proceedings and/or imposing sanctions of its own that would prevent [him] from serving as the men’s epee replacement athlete at the Tokyo Olympics.”

USAF’s letter also stated:

Nevertheless, Team athletes have expressed concerns for their safety and well-being arising from your presence, which they say are likely to adversely affect their mental and emotional abilities to prepare and compete at the highest levels required for success in the Olympic Games. Several have asked that USA Fencing put measures in place to keep them safe and minimize distractions from training and competition.

Accordingly, USA Fencing, in conjunction with the USOPC, will implement a Safety Plan (the “Plan”) for the upcoming Olympic Games. The Center provides NGBs authority to put safety plans in place to increase parties’ physical and emotional safety throughout an investigation, support a fair and neutral process, and aid in prevention of retaliatory behaviors from all parties. The Plan will assist in reducing the potential for disruptive interactions between other Team members and yourself, regardless of who might initiate them and will be in place now through your return from the Tokyo Olympic Games.

It set forth the certain Safety Plan guidelines imposing the following conditions and requirements on the Athlete:

- Your flight to Tokyo will be changed from July 16 to July 18, 2021
- You will be residing outside the Olympic Village at the same hotel that will be housing your personal coach and the Men’s Epee training partners.

- Ground transportation will be provided to and from the airport and to and from the USOPC High Performance Center (Okura). On the day of the men’s team competition, USA Fencing will provide transport to the competition venue.
- Your meals will be at Okura, which is the same location as other Team USA members.
- You may receive care from USA Fencing sports medicine providers at Okura.
- Kate Reisinger, USA Fencing’s Team Leader and Sr. Director of Sports Performance, can be reached at 719.306.5338 or [k.reisinger@usafencing.org](mailto:k.reisinger@usafencing.org) with any logistical questions before and during the Games.

On July 22, 2021, the date of the arbitration hearing, the Athlete was residing in a Tokyo hotel with his coach, Mr. Cheremsky, rather than in the Olympic Village. USFA was permitting the Athlete to train with the members of the men’s epee team; providing him with transportation to its High Performance Center and the Olympic Village, where he was allowed to have meals and workout as well as to have full access to training equipment and weights in both facilities; and ensuring that any necessary sports medicine care would be provided to him. USFA also included the Athlete in all fencing team communications.

## **LEGAL ANALYSIS**

In this arbitration proceeding, the Arbitrator has jurisdiction to consider and resolve only the issue of whether USFA has denied or otherwise violated the Athlete’s ASA or Section 9 rights,<sup>1</sup> which provide the Athlete with a procedural right to challenge any conditions or requirements of USFA’s Safety Plan that deny him the opportunity to participate in the Tokyo Olympic Games or impose any significant and unjustified constraints that his opportunity to do so is effectively denied.

### Nature and Scope of Athlete’s ASA and Section 9 Rights

Unlike the typical Section 9 dispute, the Athlete does not contend he is being denied the opportunity to participate in the Tokyo Olympic Games because, for example, USFA has imposed an interim suspension on him, expelled him as a member, or selected someone else as

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<sup>1</sup> The Center has exclusive jurisdiction to investigate and determine the merits of the pending sexual misconduct allegations against the Athlete subject to JAMS arbitral review. 36 U.S.C. §220541; SafeSport Code, Section IV(A) (“Exclusive Authority—sexual misconduct”). The Arbitrator has no jurisdiction to review or consider the merits of the June 28, 2021 JAMS arbitration award lifting the June 2, 2021 Temporary Suspension the Center imposed on the Athlete.



the replacement athlete for its men's epee team. Rather, he contends that the Safety Plan is a "quasi sanction" imposed on him by USFA after the JAMS arbitrator lifted his interim suspension, which "segregates [him] completely from the Olympic experience that he has earned" and that its restrictions "are arbitrary, unnecessary, and are tantamount to removing his right to fully participate in the Olympic Experience." He asserts that its terms "fundamentally impact his safety and wellness, as well as his ability to be ready to compete and participate" in the Tokyo Olympic Games "at the highest level just like the rest of his team." During the hearing, his primary contention was that not permitting him to reside in the Olympic Village with the men's epee team denies him the "opportunity to have a safe, secure, healthy time at the Olympic Games."<sup>2</sup>

In response, the USOPC and USFA contend that the Athlete has not been denied the opportunity to participate in the Tokyo Olympic Games because Section 9 "is about participation in *competition*, not an Olympic Village experience." (emphasis original.) They assert that the Athlete "will remain free to participate in any athletic events at the Tokyo Olympics on exactly the same terms and conditions as he would be without the Safety Plan." They note that he "has the right to train, the right to medical care and to receive meals in the High Performance Center, the ability to access the Village (just not to sleep there overnight), and the right to compete if called up from his alternate status."

The express language of the ASA (specifically 36 U.S.C. §220509 (a)) protects only "the opportunity of an amateur athlete . . . to participate in the Olympic Games," which is a "Protected Competition" under Section 9.1 of the USOPC Bylaws. Section 9.1 requires the USOPC "by all reasonable means, [to] protect the opportunity of an amateur athlete to participate if selected . . . as an athlete representing the United States in the Olympic Games and other "protected competitions."

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<sup>2</sup> The Athlete also claimed that requiring him to arrive in Tokyo two days after the other members of the fencing team "seriously puts [his] Olympic preparation in jeopardy." The Arbitrator notes that this requirement of USFA's Safety Plan potentially could have adversely affected his ability to be ready to compete and participate at his highest level in the Tokyo Olympic Games. Assuming that it did so (without making any finding either way because no evidence was submitted regarding this issue), the Arbitrator could not provide any effective remedy for him at the time of this arbitration proceeding

USFA has not denied the Athlete an opportunity to participate in the Tokyo Olympic Games contrary to or inconsistent with his current status as the replacement athlete/alternate for USFA's men's epee team. Nor has the USOPC done so. As the replacement athlete for the men's epee team, he will have the opportunity to compete in the individual or team epee competition as a member of Team USA during the Tokyo Olympic Games if one of its member athletes is injured and unable to compete. Absent an injury to an epee fencer, he could be selected to compete in the team epee event at the fencing team coach's discretion.

The Arbitrator rejects the Athlete's attempt to significantly broaden the express language of the ASA and Section 9.1 beyond "the opportunity to participate in the Olympic Games" by expanding it to encompass the "full Olympic experience," including living in the Olympic Village. It clearly would be inappropriate for an arbitrator to create this substantive right under U.S. law, particularly for Olympic sport replacement athletes. *Lindland v. U.S. Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1004 (7<sup>th</sup> Cir. 2000) ("Arbitrators are not ombudsmen; they are authorized to resolve disputes under contracts and rules, not to declare how the world should work in the large."). The Arbitrator notes Ms. Reisinger's testimony that replacement athletes generally are not entitled to the same benefits and treatment as Team USA members for the various sports. For example, replacement athletes are not eligible to march in the Olympic Games Opening Ceremony, and they normally are not housed in the Olympic Village (although the USOPC found residence space for Team USA replacement athletes in the Tokyo Olympic Village). Moreover, some Tokyo Olympic Games Team USA athletes and even entire teams (e.g., basketball, gymnastics, wrestling) choose not to live in the Olympic Village, which strongly suggests that it is not a necessary part of the "full Olympic experience" for athletes.

The benefits and treatment that the Athlete receives as a replacement athlete in comparison to those provided to other fencing team members and replacement athletes are "the same except where he [the Athlete] lays his head at night."<sup>3</sup> (Reisinger testimony). On cross examination, the Athlete acknowledged that he could eat meals and has access to weights and

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<sup>3</sup> In its "Supplemental Prehearing Memorandum," USFA notes: "This year, however, the Olympic Village experience is diminished by the measures imposed in Tokyo to combat the spread of Covid-19. Athletes residing in the Village and elsewhere will be largely confined to their quarters and their ability to socialize (to the extent that could be considered "participation in the Olympic Games") will be virtually nonexistent. Thus, even if he were at the Village, Hadzic's ability to interact with his fencing teammates or other athletes would be restricted by such measures." *Id.* at 6.

equipment at the Olympic Village as well as that he could train and eat meals with the fencing team at USFA's High Performance Center. Other than refusing to permit him to reside in the Olympic Village in a suite with the members of the men's epee team, the Athlete did not contend or submit any evidence that USFA had denied any requests he made in connection with his living arrangements, meals and nutrition needs, transportation, training or access to equipment, or sports medicine care while he has been in Tokyo.

During the hearing, the Athlete testified that staying in the same hotel as a female training partner for the women's epee team whose social media posts stated that allegations of rape, sexual assault, and sexual misconduct had been filed against him with the Center created a "hostile environment" for him. He also testified that the current location of his hotel was not near the Olympic Village and required a 45-60 minutes commute to get to USFA's High Performance Center. In response, Ms. Reisinger voluntarily agreed to relocate him and his coach to a hotel closer to the Olympic Village and to provide transportation reducing his commute time to the High Performance Center to approximately thirty minutes.

Based on the foregoing record evidence, the Athlete did not prove by a preponderance of evidence that the conditions or requirements of USFA's July 13, 2021 Safety Plan denied him an opportunity to compete in the Tokyo Olympic Games as an alternate member of its men's fencing epee team or imposed any significant and unjustified constraints that his opportunity to do so is effectively denied.

#### USFA Authority to Establish the Safety Plan and Appropriateness and Proportionality of its Conditions and Requirements

In *Claimants and USA Taekwondo, Inc.*, AAA Case No. 01-19-0000-5335 (March 19, 2019) at 26, the Arbitrator held that even if an interim suspension of an athlete is not justified under the circumstances, an NGB may impose "less restrictive conditions and requirements" on an athlete accused of sexual misconduct to protect its current member athletes "provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future 'protected competition' as an athlete." The NGB has the burden of proving by a preponderance of evidence that it has valid authority to impose appropriate and proportionate interim measures on the accused athlete to protect other athletes from "an imminent threat of

harm” pending final disposition or adjudication of alleged Safe Sport violations against the athlete by the Center. *Id.* at 12.

In *USA Taekwondo*, the Arbitrator concluded:

The ASA provides that nothing in the Congressional legislation creating the Center and establishing its authority “shall be construed to limit the ability of [an NGB] to impose an interim measure to prevent an individual who is the subject of an allegation of sexual abuse from interacting with an amateur athlete prior to the Center exercising its jurisdiction over a matter.” 36 U.S.C. § 220542(b).

[This] ASA provision does not expressly prohibit an NGB from imposing an interim measure, including a suspension, to prevent a member who is the subject of an allegation of sexual abuse from interacting with its athletes after the Center has assumed jurisdiction. Considered together, ASA provision 36 U.S.C. § 220542(a)(2)(F)(ii) and an NGB’s federal law duty under the Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017 “to implement and abide by the policies and procedures established by the Center to protect and safeguard its member athletes from sexual abuse in sports” provide a reasonable basis for concluding that an NGB has implied authority to do so. Part V of the SafeSport Practices and Procedures expressly states: “[a]t any point before a matter is final through these Procedures or arbitration, interim measures may be appropriate to ensure the safety or well-being” of athletes and others from sexual abuse. (emphasis added.) It explicitly authorizes an NGB to take “appropriate interim measures upon notice of an imminent threat of harm,” including “immediately remov[ing] a Covered Individual [e.g., athlete or coach] to address such a threat.” Section V D expressly states that interim measures may include “suspensions.”

*Id.* at 14 and 22.

USAF’s July 13, 2021 letter establishing the Safety Plan stated:

[Fencing] Team athletes have expressed concerns for their safety and well-being arising from your presence, which they say are likely to adversely affect their mental and emotional abilities to prepare and compete at the highest levels required for success in the Olympic Games. Several have asked that USA Fencing put measures in place to keep them safe and minimize distractions from training and competition.

Accordingly, USA Fencing, in conjunction with the USOPC, will implement a Safety Plan (the “Plan”) for the upcoming Olympic Games. The Center provides NGBs authority to put safety plans in place to increase parties’ physical and emotional safety throughout an investigation, support a fair and neutral process, and aid in prevention of retaliatory behaviors from all parties. The Plan will assist in reducing the potential for disruptive interactions between other Team members and yourself, regardless of who might initiate them and will be in place now through your return from the Tokyo Olympic Games.

In its “Supplemental Prehearing Memorandum,” USFA contends

The Complaint alleges without any factual basis that the Safety Plan formulated by USA Fencing and the USOPC and transmitted to Hadzic and his attorneys on July 13, 2021

(the “Plan”) was “simply meant to sanction Mr. Hadzic for being involved in an ongoing investigation by SafeSport.” Nothing could be further from the truth. The reasons for the Plan were, as stated therein, not to punish Hadzic but to address the concerns and protect the mental and emotional well-being of other athletes on the Team – specifically including athletes who, unlike replacement-athlete Hadzic, have qualified to fence in the individual event. Many of our individual qualifiers are ranked in the top 10 in the world. For that and other reasons, they and our other individual Team members stand excellent chances of winning medals in their events.

*Id.* at 2.

USFA did not provide any hearing testimony from fencing team athletes regarding “expressed concerns for their safety and well-being arising from [the Athlete’s] presence” at the time its July 13, 2021 letter establishing a Safety Plan for the Athlete was written.<sup>4</sup> On the other hand, Ms. Holmes, who spoke to USFA officials before the Safety Plan was established, stated that it indicates the fencing team athletes’ voices were heard by the USFA and USOPC. Ms. Holmes expressed concerns about the pending sexual misconduct allegations against the Athlete and the JAMS Arbitrator’s lifting of his interim suspension, which made “many more athletes upset,” a sentiment she conveyed to USFA officials. She is “somewhat concerned about her own personal safety” when in the Athlete’s presence.

Ms. Holmes testified very credibly about the fencing athletes’ current and future concerns for their safety and emotional well being if the Athlete was permitted to reside in the Olympic Village: A Zoom call was held among the fencing athletes residing in the Olympic Village. None of them wanted to testify in-person during this arbitration proceeding. They wanted to make a joint written statement, which she initially drafted based on individual written statements solicited from fencing athletes and then was edited by the women’s and men’s fencing teams. She received electronic signatures or texts from every member of the fencing team agreeing with this written statement, which was signed by Ms. Holmes. No fencing athlete was pressured to

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<sup>4</sup> In prehearing email correspondence, to provide the Affected Athletes with a voice in this hearing, Ms. Pflipsen requested they be permitted to provide written statements rather than taking time off from their training and preparation for the Olympic fencing competition (which began in two days) to testify during the hearing. The Athlete’s counsel objected because “the restrictive interim measures imposed on [him] requires that the individuals who are presenting testimony be available for cross examination and be able to speak to their serious accusation that their ‘safety and wellbeing’ is being threatened by [him].” The Arbitrator stated: “My preliminary view is that any testimony by Team USA Fencing members regarding this particular statement should be in-person and subject to cross examination rather than simply in writing, although I will make a final determination after we discuss this issue at the beginning of the hearing. To minimize any disruption to Team USA Fencing members, including Mr. Hadzic, testimony by any athletes should occur as early as possible in tonight’s hearing.”

agree or to “sign on” to it, and each of them was informed he or she instead could submit an individual written statement.

The Team USA fencing team athletes’ July 22, 2021 written statement provides as follows:<sup>5</sup>

We, the athletes of USA Fencing representing Team USA at the Tokyo 2021 Olympic Games, vehemently oppose Alen Hadzic's potential transfer to the Olympic Village. Given the timing of this arbitration, we have opted to submit a letter, as many of us are competing in a matter of hours. While we need to focus on competing, we do not want our voices silenced as a result of timing and circumstance.

We are all aware of the accusations of sexual assault raised against Alen. . . . After Alen's temporary ban was lifted, USA Fencing and the USOPC created a Safety Plan to protect the wellbeing and safety of the athletes, first and foremost. Additionally, the safety plan helps us focus on what we are here to do: compete at the highest level of sport. . . .

We, the athletes, will feel extremely unsafe should Alen be transferred to live in the Olympic village. . . .

We are already under a high degree of stress. This arbitration, and the potential for Alen to be living among us, has created a great deal more stress, tension, and distraction. We respectfully ask that you uphold the safety measures thoughtfully put in place to protect us during this incredibly important, and stressful time.

Sincerely,

2021 Olympic Fencing Team

/s/ Katherine Holmes

Ms. Holmes’ testimony regarding Team USA fencing athletes’ safety concerns if the Athlete resided in the Olympic Village and the adverse effects on their emotional well-being was corroborated by Ms. Reisinger, USFA’s Team Leader, and Mr. Leach, the fencing team’s National Coach.

Ms. Reisinger testified that “a few team members” expressed concerns about their personal safety and harm to their emotional well-being if the Athlete was permitted to live in the Olympic Village, which would be a “huge distraction” to them. She stated that the fencing team

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<sup>5</sup> The Athlete’s counsel objected to its admissibility based on the following assertion: “We have direct testimony from [a] USFA member that Ms. Holmes was unilaterally involved in creating the document and pressured/harassed other USFA team members into signing her document with the purpose of creating evidence to remove Mr. Hadzic from the Olympics. These individuals were pressured into signing it for fear of getting into trouble if they didn’t sign it.” Because counsel had a full opportunity to cross examine Ms. Holmes and no USFA fencing team members testified that any of them were pressured or harassed into agreeing with or signing the written statement, the Arbitrator ruled that it was admissible and relevant except for certain portions that were excluded from the evidence in this case.

members met on their own and had discussions about the joint athletes' written statement without their coaches' involvement, and that she is not aware that any athletes were pressured to agree with or to sign it.

Coach Leach testified that the female fencers are "very concerned" about the Athlete training in close proximity to them at USFA's High Performance Center, which makes them feel unsafe, tense, and adds "a huge amount of stress" that affects their practices and may adversely affect their performances in the Tokyo Olympic Games. According to him, if the Athlete resides in the Olympic Village, the female fencers' tension level would increase as a result of his increased presence.

The Athlete testified that the men's epee team members were pressured into signing the Team USA fencing athletes' written statement and were reluctant to testify on his behalf. None of them testified at the hearing. The Athlete's counsel did not elicit any cross-examination testimony casting doubt on the veracity of the direct testimony provided by Ms. Holmes, Ms. Reisinger, or Mr. Leach. Nor was there any evidence submitted that rebutted their testimony.

Ms. Deal, who has primary responsibility for protecting Team USA athletes' safety and security during the Tokyo Olympic Games, testified that USFA developed the Safety Plan for the Athlete after consulting with the USOPC, which approved it and is responsible for ensuring its enforcement. In her opinion, although any "direct risk of harm" to fencing athletes' personal safety "may be low," it is important that the Athlete not have access to the Olympic Village at night to prevent opportunities for "private encounters" with Team USA athletes in its residential areas. She explained that female and male fencing athletes live in the same building and on the same floors, and their paths cross in the elevators and stairwells. According to her, USOPC would be "taking a giant step backward" in its efforts to protect Team USA athletes' safety and security if it were ordered to permit the Athlete to reside in the Olympic Village, which would adversely affect Team USA athletes' by creating unnecessary emotional distress. Prohibiting the Athlete from living there is an appropriate and necessary precaution because both USFA and the Athlete Ombuds Office informed the USOPC that members of the fencing team, particularly female athletes, felt "unsafe" when the Athlete is present.

Pursuant to *USA Taekwondo*, USFA has valid authority to impose interim precautionary measures to prevent a member athlete who is the subject of pending allegations of sexual misconduct from interacting with other athletes during its investigation and until final resolution

by the Center. After consultation with the USOPC, USFA established the Safety Plan to “assist in reducing the potential for disruptive interactions between other Team members and [the Athlete], regardless of who might initiate them and will be in place now through your return from the Tokyo Olympic Games.” The Safety Plan complies with the legal framework established by *USA Taekwondo* because USFA has proven by at least a preponderance of the evidence that its conditions and requirements are appropriate and necessary to protect the Team USA fencing team, particularly its female members, from an imminent threat of harm to their emotional well-being (and potentially their personal safety), which in turn potentially could adversely affect the team’s performance during the Tokyo Olympic Games.

The terms of the July 13, 2021 Safety Plan are at least implicitly permitted by the June 28, 2021 JAMS Arbitration Award, which relies on “the continuing probation supervision of USA Fencing, and the strict regulation of members of the U.S. Olympic team [as] provid[ing] sufficient guarantees to the ‘safety or well-being’ of others to lift the Temporary Suspension.” Its conditions and requirements are not inconsistent with the JAMS Arbitration Award because they do not deny the Athlete an opportunity to compete in the Tokyo Olympic Games contrary to or inconsistent with his current status as the replacement athlete/alternate for USFA’s men’s epee team. Nor do its terms impose any significant and unjustified constraints that effectively deny his potential opportunity to participate in Tokyo Olympic Games.

Therefore, the Arbitrator determines that USFA is authorized to establish the Safety Plan and that its conditions and requirements imposed on the Athlete are appropriate and necessary to protect the safety and well-being of Team USA fencing team members, particularly its female athletes, during the Tokyo Olympic Games.

The Arbitrator rejects the Athlete’s assertion that the Safety Plan is not proportional because having one of the members of the men’s epee team chaperone him while he resides in the Olympic Village would be a less restrictive alternative than prohibiting him from living there. There is no evidence that the Athlete’s suggestion would be both a viable and effective means of protecting the Team USA fencing team, particularly its female members, from an imminent threat of harm to their emotional well-being and potentially their personal safety. Ms. Reisinger testified that USFA would not ask any fencing athlete to chaperone a peer athlete, and no members of the epee team testified that he would be willing to do so. Moreover, the Arbitrator finds that an athlete chaperone would not effectively eliminate the potential for



disruptive interactions between other Team members and the Athlete in the Olympic Village, particularly during evening hour.

In summary, the Arbitrator concludes that Section 9 jurisprudence and the record evidence establish USFA's valid authority to establish the Safety Plan and that the conditions and requirements imposed on the Athlete in connection with the Tokyo Olympic Games are both appropriate and proportionate.

### **DECISION AND AWARD**

Based on the foregoing undisputed and/or findings of material facts and legal analysis, the Arbitrator decides and awards as follows:

Claimant did not prove by a preponderance of evidence that the conditions or requirements of USFA's July 13, 2021 "Safety Plan" to protect the safety and well-being of Team USA fencing team members, particularly its female athletes, denies him an opportunity to compete in the Tokyo Olympic Games as an alternate member of the men's fencing epee team. His contentions that this "Safety Plan" is "arbitrary, unnecessary, and . . . tantamount to removing his right to fully participate in the Olympic Experience" as the men's epee alternate/replacement athlete and denies his "opportunity to have a safe, secure, healthy time at the Olympic Games" and/or "fundamentally impact[s] . . . his ability to be ready to compete and participate" in the Tokyo Olympic Games are rejected.

All claims raised in Claimant's Section 9 Complaint and his requested relief (i.e., that "the Restrictions imposed on him by USFA for the 2021 Tokyo Olympic Games be deemed unnecessary and stricken") are denied.

Because Claimant is not the prevailing party in this arbitration proceeding (even though during the hearing USFA voluntarily offered to arrange for his faster transportation to its High Performance Center and the Olympic Village as well as to relocate Claimant and his personal coach Alexey Cheremsky to another Tokyo hotel), his July 21 and 22, 2021 requests that USFA pay his attorneys fees and costs are denied.

The Administrative fees of the AAA totaling \$1,095 are to be borne as incurred. The Compensation of the Arbitrator totaling \$2,000 is to be borne as incurred. The parties shall bear their own attorney's fees and/or costs associated with this arbitration.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are denied.



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August 6, 2021

Matthew J. Mitten, Arbitrator